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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,327	01/17/2004	Kasthuri Venkateswaran	CIT002	8321
28848	7590	03/17/2006	EXAMINER	
TOPE-MCKAY & ASSOCIATES 23852 PACIFIC COAST HIGHWAY #311 MALIBU, CA 90265			TONGUE, LAKIA J	
			ART UNIT	PAPER NUMBER
			1645	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,327	VENKATESWARAN ET AL.	
	Examiner	Art Unit	
	Lakia J. Tongue	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response filed on February 21, 2006 is acknowledged. Claim 1 is pending and under consideration.

The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior Office Action.

Rejections Withdrawn

In view of applicants' response the rejection under 35 U.S.C. 102(a) on page 3 is withdrawn.

Rejections Maintained

The rejection of claim 1 under 35 U.S.C. 102(b) is maintained for the reasons of record (page 2 of the Final action).

The rejection was on the grounds that Venkateswaran et al disclosed spore-formers isolated from a spacecraft being that of the genus *Bacillus*. Venkateswaran et al disclose that spores of the bacterial species exhibited resistance to UV, γ -radiation, (H₂O₂) and desiccation. The instant specification characterizes the *Bacillus odysseyi* sp. nov., as round spores that are resistant to Ultra Violet (UV) and gamma radiation, Hydrogen Peroxide (H₂O₂) and desiccation (page 5, section 00035). Aside from the difference in the names of the above strains it is unclear what the differences are between the *Bacillus nealsonii* sp. nov strain, which was isolated from a spacecraft assembly facility and the *Bacillus odysseyi* strain, which was isolated from a spacecraft assembly facility. The organisms appear to be the same microorganisms by a different name.

Applicant urges that a) the examiner misinterprets what has been done in the specification, b) the cited reference discloses *Bacillus nealsonii*, not *Bacillus odysseyi* and c) *Bacillus odysseyi* is aerobic, while *Bacillus nealsonii* is anaerobic.

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It is the examiner's position that the claims are drawn to an isolated biologically pure culture of *Bacillus odysseyi* strain 34hs-1 under accession number NRRL B-30641. Contrary to applicants' arguments *Bacillus nealsonii* as disclosed in Venkateswaran et al is facultatively anaerobic. Facultative anaerobic bacteria are able to obtain energy and grow oxidatively by using oxygen as a terminal electron acceptor, or they can grow under anaerobic conditions, obtaining energy by fermentative pathways in which organic compounds serve as terminal electron acceptors (Allen et al, Section VI, Isolation and Examination of Anaerobic Bacteria, Manual of Clinical Microbiology, Fourth Edition, 1985, page 413). Thus, the *Bacillus nealsonii* can also operate under aerobic conditions. Aside from the difference in the names of the above strains it is unclear what the differences are between the *Bacillus nealsonii* sp. nov strain, which was isolated from a spacecraft assembly facility and the *Bacillus odysseyi* strain, which was isolated from a spacecraft assembly facility. The organisms appear to be the same microorganisms by a different name.

Conclusion


No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakia J. Tongue whose telephone number is 571-272-2921. The examiner can normally be reached on Monday-Friday 7-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


LJT
3/10/06


LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER